



The Voice of Small Business

MICHIGAN

For Immediate Release

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Small Business Owners Urge Senate Committee to Protect Franchise Model

October 7, 2015 (Lansing) – The state's leading small business organization, the National Federation of Independent Business (NFIB), testified today along with a number of Michigan based franchise owners in support of legislation that would clarify the relationship between franchisor and franchisee employees. The legislation is necessary because of a recent ruling by the NLRB (National Labor Relations Board) that changed current law in the relationship between employers, franchise arrangements and independent contractors.

“The Michigan legislature is taking action to be sure that, in matters of state law, the ruling by the NLRB will not affect the traditional and correct interpretation of the employer and employee relationship that has governed franchise law in our state for decades,” said NFIB State Director Charlie Owens. “The bottom line is that the NLRB actions in expanding the definition of a joint employer to include a franchisee’s national brand will destroy the franchise model leading to industry consolidation, store closures, a loss of jobs and economic activity and entrepreneurial investment.”

On August 27, 2015 the National Labor Relations Board (NLRB) issued a ruling concerning the relationship between employers, franchise arrangements and independent contractors. The agency issued a radical reconstruction of the “joint employer rule” which has been settled law for decades. In its ruling the NLRB expanded the definition to include both indirect, direct, and even potential, unexercised control over employees in a joint employer determination. The previous joint employer standard had been in place since 1984. Under that standard, an entity was a joint employer only if it exercised direct and immediate control over another business’s employees, including having the ability to hire, fire, discipline, supervise or direct an individual. Entities were joint employers only when they share that direct control over the terms and conditions of employment for the same employees. Previously, most franchisors, franchisees (independent businesses), and subcontractors were treated as separate businesses.

Senate Bills 492 sponsored by Senator Jack Brandenburg (R-8) and 493 sponsored by John Proos (R-21) amend the Franchise Act and the Workers Disability Act to clarify that franchisors and franchisees are treated as separate businesses under Michigan law. Companion House Bills 4901 sponsored by Representative Joe Graves (R-51) and 4902 sponsored by Representative Daniela Garcia (R-90) have also been introduced.

Owens said that more bills would be forthcoming as other state laws are examined to determine if the clarification is necessary.

Federal legislation has also been introduced in Congress to nullify the actions of the NLRB. The “Protecting Local Business Opportunity Act” HR 3459 is sponsored by U.S. Representative John Kline from Minnesota. Michigan Congressmen John Moolenaar, Tim Walberg, Bill Huizenga and Mike Bishop are all co-sponsors of the bill. In the U.S. Senate an identical bill, S.2015, is sponsored by Senator Lamar Alexander from Tennessee.

For more information about NFIB, please visit www.nfib.com.



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**Testimony on Michigan Franchise Law Changes
Before the Senate Commerce Committee
Wednesday, October 7, 2015**

My name is Charlie Owens and I am the State Director for the National Federation of Independent Business, an advocate for Michigan small businesses owners since 1943. We are here today to support Senate Bills 492 and 493 that would amend the Franchise Act and the Workers Disability Act to clarify that franchisors and franchisees are treated as separate businesses under Michigan law. This legislation is necessary because of a recent ruling by the NLRB (National Labor Relations Board) that changed current law (known as the "joint employer rule") as regards the relationship between employers, franchise arrangements and independent contractors.

On August 27, 2015 the National Labor Relations Board (NLRB) issued a ruling concerning the relationship between employers, franchise arrangements and independent contractors. The agency issued a radical reconstruction of the "joint employer rule" which has been settled law for decades. In its ruling the NLRB expanded the definition to include both indirect, direct, and even potential, unexercised control over employees in a joint employer determination. The previous joint employer standard had been in place since 1984. Under that standard, an entity was a joint employer only if it exercised direct and immediate control over another business's employees, including having the ability to hire, fire, discipline, supervise or direct an individual. Entities were joint employers only when they share that direct control over the terms and conditions of employment for the same employees. *Previous to this ruling, most franchisors, franchisees (independent businesses), and subcontractors were treated as separate businesses.*

The bottom line is that the NLRB actions in expanding the definition of a joint employer to include a franchisee's national brand will destroy the franchise model leading to industry consolidation, store closures, a loss of jobs and economic activity and entrepreneurial investment. For the labor unions and the Obama administration that sought this result, it will make it easier for big labor unions to strike and organize franchise business employees and small independent contractors.

NFIB supports the Michigan legislature in taking preemptive action with these bills to be sure that, in matters of state law, this ruling by the NLRB will not affect the traditional and correct interpretation of the employer and employee relationship that has governed franchise law in our state for decades. We are also taking action at the federal level with legislation that has been introduced in Congress to nullify the actions of the NLRB. The "Protecting Local Business Opportunity Act" HR 3459 is sponsored by U.S. Representative John Kline from Minnesota. Michigan Congressmen John Moolenaar, Tim Walberg, Bill Huizenga and Mike Bishop are all co-sponsors of the bill. In the U.S. Senate an identical bill, S.2015, is sponsored by Senator Lamar Alexander from Tennessee.

We urge the Committee to report out these bills for full consideration by the Senate and we thank you for your support of Michigan's small business owners.